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PRINCIPLE OF SUPREMACY OF THE EUROPEAN UNION LAW VS STATE SOVEREIGNTY

European integration is one of the main priorities of the foreign policy of Ukraine. It offers to create an economically developed, ruled on law democratic state based on the European values. Instead of such preferences joining the EU is necessary to pass some state sovereign rights on the European level. In this context a principle of supremacy of the EU law is one of the effective instruments to guarantee its supranational nature. Preceding from this mechanism of membership a strong political cliché is that it could create a threat for the state sovereignty which is active manipulated in Ukraine. Therefore it is necessary to investigate the legal nature of the principle of supremacy of the EU law.

Modern wording of the EU founded treaties – Treaty on the European Union and the Treaty on the Functioning of the European Union – contains no provision dealing with the supremacy of the EU law over national law. Notwithstanding the absence of any explicit provision in the founded treaties, the European Court of Justice enunciated its vision of supremacy in the early years of the Communities existence. Since the first judgment in Case 26/62 Van Gend and Loos the Court has been stating that the Community (now EU) constitutes a new legal order of International Law for the benefit of which the states have limited their sovereign rights. In Case 6/64 Costa v ENEL the Court declared that the Community law was bound both member states and their nationals. We should point out that it is not a feature for the International Law which generally has a public effect. Later it emphasized that the European integration would be possible only if the should follow European Community law and refuse from the legislation which derives from the Community's one. According to the Opinion of the Council Legal Service of 22.07.2007 the fact that the principle of supremacy is not included in the founded treaties doesn't change its existence. So it results from the case-law of the Court of Justice that primacy of the EU law is a cornerstone principle of European legal order; this principle is inherent to the nature of the EU.

Due to the case-law of the Court of Justice principle of supremacy of the EU law means its hierarchy over any national legislation, general or even constitutional. This way any member state shall not refer to its constitution as a ground to avoid the fulfillment of its obligations based on the Treaty on the European Union and the Treaty on the Functioning of the European Union if there is a conflicting provision of its basic law. Otherwise the European law should be blocked by national constitutions. By virtue of Case 106/77 Simmenthal national courts of member states are also under the duty to refuse from any conflicting provision of national legislation, even if adopted subsequently. This rule is obligatory for all law-enforcement agencies of the state. If the national court is doubt the legal sense of the EU legal norm it shall refer to the Court of Justice to give its prejudicial opinion

according to the art. 267 of the Treaty on the Functioning of the European Union. In addition there is a strong mechanism of legal liability of the state when it breaches the EU law.

As it was noted before modern wording of the founded treaties doesn't clearly fix the principle of supremacy of the EU law. The supremacy clause was incorporated only with the Lisbon Treaty in the Declaration concerning Primacy No 17. But its legal effect is characterized no more than soft law, so formally it should not accrue any legal obligations for the member states. This is the reverse side of the coin.

The principle of supremacy of the EU law is sufficiently different from the principle of supremacy of national constitution, as well as in Ukraine. Its legal force is weaker than in many member and third states. The problem is that the founded treaties that constitute the basis of the Union legal order are in their origins basically international treaties and were originally seen as instruments of international law. Thus, national attitudes towards Union law depend on understandings about the position of international law in the domestic legal system. In monist states (Croatia, France, Italy, Netherlands etc.) international law and the European Law based on it is automatically incorporated in national law without need for father transposition. So there is a minimum risk of collision between these systems of law.

But most states (Ireland, Poland, United Kingdom etc.) follow a doctrine of dualism which presupposes the existence of two separate systems of law – international and domestic. Under dualism international (and European) law does not become a part of national law until appropriate national measures determined in theirs constitutions so provide. So during the incorporation of the EU norms there is a risk of its collision with the domestic legislation of member state. This is a great problem because there is no any legal mechanism to annul national norm conflicting with the European one. In practice there is a huge range of national norms which sufficiently differ from the legislation of the European Union. It should be the basis of liability of the member state. However the European Court of Justice as well as other institutions of the European Union has no power to repeal or change any national law differing from the EU law. It is a sovereign right of the state to make its legislation and only the state should adopt its legislation to be corresponded to the European law. Modern EU is not a federal state and has no powers to do it instead of the member states.

In conclusion we should admit that the principle of supremacy of the EU law is weaker than the principle of supremacy of national constitution in many states, as well as Ukraine. The legal force of the principle of supremacy of the EU law is grounded on the case-law of the European Court of Justice and a "good will" of the member states which recognize the necessity of its existence for the developing of the European integration. It should not create a threat for the state sovereignty foremost because of absence the mechanism of annulling national norm conflicting with the European one. Moreover in exceptional cases in respect on principal national interests founded treaties release member states from fulfillment separate norms of the EU law. This is a compromise of sufficient limitations of many sovereign rights of the member states.